Paper No. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte SANDRA RICHARDSON, DOUGLAS CLARK, MATTHEW BENNETT, and JIM FINWICK

M3653.6001/P001

Appeal No. 2004-0812
Application No. 09/334,256

ON BRIEF

COL 10-10

Before HAIRSTON, FLEMING, and GROSS, ***Administrative Patent Judges***.

GROSS, ***Administrative Patent Judge***.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 4 and 7 through 23, which are all of the claims pending in this application. Claims 5 and 6 have been canceled.

Appellants' invention relates to a method for modeling multiple tasks for multiple users. Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. A method for modeling multiple tasks for multiple users comprising the steps of:

breaking a project into said multiple tasks;

activating a current tasking horizon, said tasking horizon comprising one of a plurality of time frames over which said multiple tasks can be completed;

selecting a language for at least one of said multiple tasks;

receiving an actual date for said at least one of said multiple tasks;

receiving an estimated date for said at least one task;

calculating a first negative churn if said received estimated date is created in or moved into said current tasking horizon;

calculating a first positive churn if said received estimated date is deleted or moved out of said current tasking horizon;

calculating a second positive churn if said received estimated date exists in said current tasking horizon and said received actual date is moved out of or is created outside of said current tasking horizon;

calculating a third positive churn is [sic, if] said received actual date is moved out of said current tasking horizon and an accompanying received estimated date is not in said current tasking horizon;

calculating a second negative churn when said received actual date is created in or is moved into said current tasking horizon and said received estimated date is not in said current tasking horizon; and

receiving language that corresponds to said actual date, wherein a verb describes a reason for said actual date and for said churn.

The prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

William R. Duncan, A Guide to the Project Management Body of Knowledge, PMI Standards Committee, Project Management Institute (1996). (Duncan)

Claims 1 through 4 and 7 through 23 stand rejected under 35 U.S.C. § 103 as being unpatentable over Duncan.

Reference is made to the Examiner's Answer (Paper No. 25, mailed January 14, 2003) for the examiner's complete reasoning in support of the rejection, and to appellants' Brief (Paper No. 24, filed October 21, 2002) and Reply Brief (Paper No. 26, filed March 14, 2003) for the appellants' arguments thereagainst.

OPINION

We have carefully considered the claims, the applied prior art references, and the respective positions articulated by appellants and the examiner. As a consequence of our review, we will reverse the obviousness rejection of claims 1 through 4 and 7 through 23.

The examiner (Answer, page 4) sets forth the definitions he uses for various terms including "tasking horizon" and "churn" for applying the prior art. However, the definitions he uses are inconsistent with the definitions provided by appellants on page 8 of the specification. Specifically, the examiner states that he interprets "tasking horizon" as "the duration of time included in the planned time span defined by the task start and stop dates," and "churn" as "the difference between the planned start and stop dates and the actual start and stop dates," or, rather,

the difference between the tasking horizon as defined by the examiner and the actual start and stop dates. Appellants define "tasking horizon" as "the farthest point in time in the future where a manager believes a task will be completed as planned," which may be further in the future than the assigned time for a task. The tasking horizon is the latest time by which the task is expected be completed, not the scheduled time for completion. Appellants' churn is the movement of tasks in relation to the tasking horizon, not in relation to the scheduled start and stop time for a task.

The examiner (Answer, page 4) directs our attention to pages 30-32 and 170 of Duncan for the disclosure of "activating a tasking horizon," as recited in claim 1. We read Duncan's disclosure (page 31) as estimating the amount of time needed or, rather, planning a time span defined by targeted start and stop dates (which are defined by Duncan on page 170), which is consistent with the examiner's interpretation of "tasking horizon." However, as indicated ***supra***, appellants' "tasking horizon" differs from this definition and, therefore, from Duncan's disclosure.

For calculating churn, as recited in claim 1, the examiner asserts (Answer, page 5) that "Duncan does not specifically disclose calculating . . . [the various churns recited in

claim 1]. However, Duncan discloses tools to perform variance analysis involving comparing actual project results to planned or expected results." The examiner concludes (Answer, pages 5-6) that it would have been obvious to modify Duncan "to disclose the functionality necessary to calculate" the various churns, "through the performance reporting mechanisms provided by the invention of Duncan, since they are already encompassed by Duncan."

Appellants indicate (Brief, page 15) that an important aspect of the invention is the defining of "a predetermined, task-independent planning window into and of which various estimated and actual task dates are scheduled and/or moved," and the analyzing of the progress of various project tasks "by focusing on reasons for 'churn,' i.e., reasons why an actual task date differs from an estimated task date, when the churn dates are not encompassed entirely within a selected tasking horizon." The examiner has admitted that this feature is not disclosed by Duncan, but insists that it would have been obvious anyway. We disagree. A factual inquiry whether to modify a reference must be based on objective evidence of record, not merely conclusionary statements of the examiner. ***See In re Lee***, 277 F.2d 1338, 1342-43, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002). Without some teaching or suggestion in the reference as to why

one might modify the reference in the manner suggested by the examiner, the examiner has failed to establish a ***prima facie*** case of obviousness. Accordingly, we cannot sustain the obviousness rejection of claim 1 and its dependents, claims 2 through 4, 7, 8, 11 through 15, and 19.

Independent claims 9, 17, and 23 all recite the steps of selecting a tasking horizon and computing churn of at least one task. As we have found the disclosure of Duncan lacking with regard to tasking horizons and the calculation of churn, and the examiner has provided no convincing evidence or line of reason for the obviousness of modifying Duncan, we cannot sustain the obviousness rejection of claims 9, 17, 23, and their dependents, claims 16 and 18.

Regarding independent claims 10 and 22, each recites a management module for selecting a tasking horizon wherein the management module computes a churn. As explained ***supra***, Duncan fails to disclose or suggest tasking horizons and computing churn. Therefore, we cannot sustain the obviousness rejection of claims 10 and 22 and their dependents, claims 20 and 21.

CONCLUSION

The decision of the examiner rejecting claims 1 through 4 and 7 through 23 under 35 U.S.C. § 103 is reversed.

REVERSED

KENNETH W. HAIRSTON)
Administrative Patent Judge)
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Administrative Patent Judge) APPEALS
) AND
) INTERFERENCES
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)
ANITA PELLMAN GROSS)
Administrative Patent Judge)

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